(1969) 05 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Appeal No. 244 of 1969

Sujan Singh and Another — APPELLANT

Vs

The Appellate Assistant Commisoner, Sales Tax — RESPONDENT

Date of Decision : 20-05-1969

Acts Referred:

Citation : (1970) 6 DLT 12 : (1969) 24 STC 504

Hon'ble Judges : S.I. Rangarajan, J

Bench : Single Bench

Advocate : D.D. Chawla and B. Kirpal, for the Appellant;

Judgement

S. Rangarajn, J.

(1) The short question for decision in the civil writ petition is whether additional demand of Rs. 35,211.40 for sales tax in respect of the motor-bodies built by the petitioner is valid. The decision of this question would depend upon the interpretation of item I of the First Schedule of the Bengal Finance (Sales Tax) Act 1941, as extended to the Union Territory of Delhi (hereinafter called the Act), as it stood prior to the amendment of the same by notification dated the 31st August 1966. It then read as follows:-

"Motor Vehicles, including chasis of motor vehicles, motor tyres and tubes and spare parts of Motor vehicles."

The expression ''accessories'' was introduced'' after motor tyres and tubes" but before "and spare parts of motor vehicles" with effect from 1st September, 1966 by the aforesaid notification. Since the assessment in question in this writ petition deals with the period prior to the said notification of the year 1966, we are not concerned, in this writ petition, with the question whether motor-bodies would come within the expression accessories or not. We are, on the other hand, concerned only with the question whether motor bodies would come under the expression "spare parts" of motor vehicles.

(2) It is pertinent to note that according to section 5(l)(a) of the Act the rate of tax payable by a dealer shall be levied as follows:-

"(A)in the case of taxable turnover in respect of the goods specified in the First Schedule, at the rate of ten paise in the rupee : (b) in the case of taxable turnover in respect of the goods specified in the Third Schedule, at the rate of two paise in the rupee; (e) in the case of taxable turnover in respect of any other goods, at the rate of five paise in the rupee."

(3) According to section 5 read with First Schedule of the Act a rate of ten paise in the rupee can be charged in respect of the goods specified in the First Schedule, as per clause 5-A of section I (a), whereas if, "motor-bodies" do not fall within the First Schedule of Item I, this case would fall only under clause (e) of section 5(1); the rate would then be only five paise in the rupee, namely, half of what is livable on the sale of goods mentioned in the First Schedule.

(4) Before I discuss this question on the merits, I have to deal with the preliminary objection raised by Shri B.N. Kirpal, learned counsel for the respondents, that the petitioner not having filed the revision petition, as he was entitled to do against the impugned order imposing the additional tax, he could not file the present writ application. On this question, his Lordship Mr. Justice Sikri held in Collector of Customs mid Exise, Cochin v. M/s A.S. Bava, that the existence of a remedy by way of revision does not bar the jurisdiction of the High Court to entertain a petition under Article 226. In view of the aforesaid ruling, which appears to be the latest among those cited before me on this point, there is no need to notice the other decision which were cited before me. It being admitted that only a revision, not an appeal, lay against the impugned order the above said decision of the Supreme Court would directly apply to this case. The preliminary objection to the maintainability of the writ petition is, Therefore, over-ruled.

(5) The meaning of ''spare part'' has been given in the Webster''s Third Mew International Dictionary, Volume II, 1967 Edition, page 2183, Column I, as follows:-

"AN extra part of a vehicle or machine kept for use in emergency or replacement."

Obviously, the body of a motor-vehicle cannot fall within the expression ''spare part''.

(6) In Commissioner of Sales Tax v. Amar Radio Cabinet Works'', the Division Bench of the Bombay High Court held that radio cabinets do not fall within the expression ''spare parts'' in entry No. 65 of Schedule C to the Bombay Sales Tax Act, 1959. It was contended for the revenue in that case that the expression "spare paits", should be equated with the terms "parts" without regard to the colour that is lent by the word "spare" with which it if associated in that entry. In repelling this contention. Vimadlal, J. observed as follows:-

"AS a matter of plain language, the expression "spare parts" connotes a part which requires replacement in the ordinary course on account of war and tear, and as an extra item for use in an emergency. It is inconceivable that anybody would keep a radio cabinet as an extra for use in an emergency, or that it could be said to be a part which would require replacement in the ordinary course on account of wear and tear. There may be exceptional cases in which a person replaces his radio cabinet, but, in interpreting an entry of this nature, we must give to the words occurring therein the meaning that can be attributed to them in common parlance and in common usage."

A similar principle would have to be adopted in the case of motor-bodies also. To merely state that the motor-body is a part of the motor vehicle and would, Therefore, follow the expression "spare parts" would be to ignore "spare" which precedes "parts" and lends colour to the said expression

(7) The impugned order (of the Appellate Assistant Commission, Sales Tax) relied upon the decision of the Allahabad High Court in Commissioner of Sales Tax Uttar Pradesh Lucknou v. Pritam Singh. What was considered in that case was the question whether the body mounted on the chassis of a motor vehicle was an integral part of the motor vehicle and could, Therefore, be considered to be "component parts of motor vehicles" within the meaning of item No. 24 of the Notification issued under that Act. That has clearly no application to the present case because the expression "component" is different from the expression "spare parts" with which we are alone now concerned. The interpretation placed upon the expression "spare parts" in the impugned order is erroneous and hence the impugned order has to be quashed.

(8) The writ petition is, Therefore, accepted and the impugned order, levying an additional demand of sales-tax on the motor bodies built by the petitioner for the aforesaid period in question, is quashed. The petitioner will be entitled to the costs of this application. Counsel''s fee Rs. 200.

